THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.2704 of 2006

Date of Decision: 30 -10- 2006

Paramjit Singh etc. **.....Petitioners**

v.

Kewal Krishan **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Akshay Bhan, Advocate
for the petitioners.

Arun Palli, Advocate
for the respondent.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed against order dated 12.12.2005 passed by the learned Rent Controller, Nabha and the order dated 26.4.2006 passed by the Appellate Authority, Patiala vide which a petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as, `the Act') by the respondent-landlord was allowed and the petitioner-tenants were ordered to be evicted and a first appeal filed against the same was dismissed by the Appellate Authority. The Rent Controller as also the Appellate Authority found in favour of the respondent-landlord on the ground of bona fide personal necessity.

The relevant facts as emerge from a reading of the orders of the Courts below and the pleadings of the parties are that the shop in dispute was let out to Mohan Lal father of the petitioners over four decades ago. After the death

of their father the petitioners have been in possession of the shop in dispute as tenants. The landlord retired from Government Service on 30.11.2001 after serving as a Junior Engineer in the PWD (B&R) Branch. It was his case that he wanted the shop in question for his own use and occupation to run the business of selling electical goods. He has placed on record document Ex.P6 to show that he has a National Trade Certificate from an I.T.I. as a trained Electrician. He has also placed on record Ex.P7 which is a certificate issued by the Chief Electrical Inspector, Punjab to the effect that he was qualified to act as Electrical Supervisor. In his petition the landlord had disclosed that behind the shop in question and adjoining the same there are two shops also owned by him which were in possession of Ishwar Dutt and Yousaf Khan as tenants. He has stated that he had already filed petitions for eviction of the said tenants as well. It was further his case that he had not vacated any non-residential property within the municipal limits of Nabha where the shop is located after coming into force of the Act. It was his case that while he wants the shop in question for his own use to sell electrical goods, in the two shops which are on the back of the demised shop he wanted to settle his two sons who were unmarried. The tenants contested the petition denying the fact that there was any bona fide personal necessity of the landlord.

After examining the controversy, the Rent Controller held in favour of the landlord after holding as hereunder:-

> "18. In view of these legal propositions we find that petitioner has supported his version in witness box fully. He has not concealed any fact that after institution of present suit, two other shops were also got vacated. But he has categorically proved that these shops have been given to his sons. Ld. counsel for the respondent has argued that petitioner does not require demised shop any more. But this plea can not be accepted. It is evident from site plan that shops got

vacated have been handed over to his sons and these shops have got less commercial value and utility than the demised shop in question. These shops are at the back of demised shop and open in the street. Demised shop open in the main market, Nabha. Therefore, petitioner who is qualified electrician if want to set up his own business in this very shop is nothing un-natural and un-reasonable. His sons are unskilled. So opening of shop by petitioner in demised shop by he himself is not altogether un-reasonable and faoiful idea. Rather argument of counsel for respondents are quite amusing. It is submitted that he has got no need of demised shop. His sons are un-married. He is a retired person. I have considered the arguments. Respondents are no body to suggest that petitioner after his retirement from service should sit idle or take `Sanyas'. There is nothing wrong if petitioner starts his own business and enhance his income after retirement. Very fact that his both sons are un-married makes his need more forceful. By opening business in main market would not only enhance income of petitioner but also would upgrade their social and financial status in the society.

19. Stand of the respondents is staggering. In reply, it has been averred that petitioner simply want to harass the respondents and want to get enhanced rent. But as RW1 respondent Balwinder Kumar has deposed that he want to evict the respondents only to let it out again on higher rent. These two pleas are different. Rather petitioner has got strong full proof case of his personal necessity."

These findings of the learned Rent Controller were affirmed by the Appellate Authority.

I have heard Mr.Akshay Bhan, learned counsel for the tenant-petitioners and Mr.Arun Palli, learned counsel for the landlord-respondent and

perused the paperbook.

Learned counsel for the tenant-petitioners contends that both the learned Rent Controller as also the Appellate Authority have not returned any finding to the effect that the landlord "needs" the demised shop for himself. He states that a reading of the petition would show that only a bald statement has been made that he needs the demised shop for his own use and occupation without dilating as to what is his need for the shop. It is his further contention that during the pendency of these proceedings the two shops located at the back of the demised shop were already vacated and the same are in occupation of both the sons of the landlord. Thus, both his sons have also been settled. He further states that even these two shops open in a street and the landlord can also carry on business in those shops.

On the other hand, learned counsel for the landlord-respondent submits that he had made a clean statement in the eviction petition that there were two other shops beyond the demised shop. He states that in fact a reading of the statement of the tenant itself showed that these shops are actually two small shops (booths). During the pendency of the present petition the same have been got vacated and two sons of the landlord-respondent are running the business in the same after removing the intervening wall. He submits that the door of the demised shop opens into the main market which is called as Sadar Bazar, Nabha. The two shops are located on the back of the demised shop and open in a street. He states that need of the landlord was to start the business of selling electrical goods in the demised shop. He states that the landlord is a qualified Electrician and after his retirement from service he wants to remain active and busy by carrying on the business in his own shop. While he has settled both his sons, he needs the demised shop for his bona fide personal necessity. This is all the more so as the demised shop is much bigger in size than the two shops. He has further drawn my attention to para 2(iii) of the eviction petition to state that the landlord had stated in detailed

in the eviction petition his requirement for the said shop on the ground of bona fide personal necessity. At this stage, it is relevant to reproduce the averments made in para 2(iii) of the petition, the relevant part of which is as hereunder:-

> "2(iii). The applicant needs the shop for his personal use and occupation. The applicant will start the business of selling electric goods in the impugned shop. The applicant is a qualified electrician and now he has retired from Govt. service on 30.11.2001, as J.E. Electricals from PWD B&R. The applicant has got a licence from the Chief Electrical Inspector of Punjab for doing the work of Electrical Supervisor. The certified copies of the certificates are attached. The applicant is not in possession of any other non-residential property within the Nabha Municipal limits and the applicant has not vacated any non-residential property after coming into force of the said Rent Act, within the Nabha Municipal limits. The applicant also needs the shops in possession of Ishwar Dutt and Yusaf Khan tenants (situated at back of the impugned shop) for the business of his sons, for which proceedings shall be initiated separately before the Hon'ble Court."

After hearing learned counsel for the parties, I do not find any merit in the contentions raised by learned counsel for the petitioners. It has been clear and consistent case of the landlord-respondent that he needed the shop in question for himself. Consequent upon his retirement in the year 2001 he wanted to remain active and busy by doing the business of selling electrical goods in the demised shop. It is also relelvant to note here that that the landlord has a National Trade Certificate of "Electrician" from an Industrial Training Institution. He has also a licence from the Chief Electrical Inspector, Punjab to act as a Supervisor

(Electrical). He has even retired as a Junior Engineer (Electrical). Therefore in these facts and circumstances, I am of the opinion that the present is a case where the landlord wants to put his education and experience into practice by opening his own shop to start the business of selling electric goods after his retirement and therefore his need for the said shop is clearly made out. Consequently, I do not find any error in the view taken by the Courts below.

Learned counsel for the petitioners has placed reliance on a judgment of the Hon'ble Supreme Court in **Gulabbai v. Nalin Narsi Vohra**, AIR 1991 SC 1760 to contend that the Court has to draw a distinction between a mere desire and need. He has referred to the following observations in the aforesaid judgment:-

> "27. It is also relevant to consider in this connection the observations of this Court in **Bega Begum v. Abdul Ahad Khan, 1979(1) RCR 170** as regards the meaning of the words `reasonable requirement and own occupation as used in S.11(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966. It has been held that the words `reasonable requirement' undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire."

He has also placed reliance on a judgment of this Court in **Salim Ahmed v. Surjit Kumar Sahai**, 1998(3) P.L.R. 182 for the same proposition. He has relied upon the following observations:-

> "14. But as is apparent from the facts, it is not that the landlord at any time and every time can seek eviction. It is not his whimsical or fanciful desire. There has to be an element of need before it can be stated that the requirement is bona fide. The same is missing in the present case, therefore, the said contention necessarily must fail."

A reading of the judgments relied upon by the learned counsel would show that in both the cases the Court has taken the view that to seek an order of eviction there has to be an element of need and not a mere desire. However, the Hon'ble Supreme Court has also sounded a note of caution that though the distinction between desire and need should doubtlessly be kept in mind but not so as to make even the genuine need as nothing but a desire. There can be no quarrel with this proposition. However, In the present case I have already come to the conclusion that the landlord needs the shop to set up his own business and the same is more than a mere desire.

For the reasons aforementioned, I find no merit in this revision petition. The same is accordingly dismissed.

(P.S.PATWALIA)
JUDGE

October 30, 2006.

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